

HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

EARL KENNETH SHRINER,

Petitioner,

v.

JOSEPH LEHMAN,

Respondent.

Case No. C03-5672 RBL

ORDER

THIS MATTER comes on before the above-entitled Court upon Petitioner's filing of a Notice of Appeal [Dkt. #24, entered January 30, 2006].

Having considered the entirety of the records and file herein, the Court finds and rules as follows:

Petitioner has filed a Notice of Appeal of this Court's Order Adopting Report and Recommendation [Dkt. #21] and Judgment [Dkt. #22, entered May 21, 2004], dismissing petitioner's 28 U.S.C. § 2254 petition. In order for this appeal to proceed, this Court must first issue a Certificate of Appealability. See U.S.C. § 2253(c)(1). In addition to the fact that this appeal does not appear to be timely, see Fed. R. App. P. 4, this Court declines to issue a Certificate of Appealability because, for the reasons set forth in the Report and Recommendation, the petitioner has failed to make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2).

IT IS SO ORDERED.

1 The Clerk shall send uncertified copies of this order to all counsel of record, and to any party appearing
2 pro se.

3 Dated this 21st day of February, 2006.

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5 RONALD B. LEIGHTON
6 UNITED STATES DISTRICT JUDGE
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